

**CIVIL SERVICE COMMISSION MINUTES**

**MAY 5, 2004**

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Marc Sandstrom  
A.Y. Casillas  
Barry I. Newman  
Francesca Krauel

Absent was:

Gordon Austin

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

**Approved**  
**Civil Service Commission**

**May 19, 2004**

COUNTY OF SAN DIEGO  
CIVIL SERVICE COMMISSION MINUTES  
MAY 5, 2004

1:30 p.m.            CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.            OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

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<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
4,6(a),7,8,9,11	14,15	8	4,6,12
12,13,14,15,16			

COMMENTS: Motion by Newman to approve all items not held for discussion; seconded by Krauel. Carried.

**CLOSED SESSION AGENDA**  
County Administration Center, Room 458  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the public may be present at this location to hear the announcement of the closed session agenda.

A. Commissioner Newman: Monica Guizar, Esq., on behalf of **Laura Dizon**, former Eligibility Technician, appealing a Final Notice of Automatic Separation for Failure to Return After Leave from the Health and Human Services Agency.

B. Commissioner Newman: Richard Pinckard, Esq., on behalf of **2004-03\***, former Sheriff's Sergeant-Detentions, appealing an Order of Termination and Charges from the Sheriff's Department.

**OPEN SESSION AGENDA**  
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and approved by the Commission President.

**MINUTES**

1. Approval of the Minutes of the regular meeting of April 21, 2004.  
**Approved.**

## CONFIRMATION OF ASSIGNMENTS

2. Commissioner Austin: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Jesse Garcia**, former Plumber, appealing a Final Order of Termination and Charges from the Department of General Services.

**Confirmed.**

3. Commissioner Sandstrom: Everett Bobbitt, Esq. on behalf of **2004-05\***, Deputy Sheriff-Detentions/Court Services, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**Confirmed.**

4. Commissioner Newman: Richard Pinckard, Esq. on behalf of **2004-06\***, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges from the Sheriff's Department

**Withdrawn.** (See Off-Docket Item No. 6A below)

5. Commissioner Casillas: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Norman Jackson**, former Supervising Communicable Disease Investigator, appealing a Final Order of Removal and Charges from the Health and Human Services Agency (HHSA).

**Confirmed.**

## WITHDRAWALS

6. Commissioner Newman: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Marjorie Bramwell**, Public Health Nurse II, appealing a Final Order of Suspension and Charges from the HHSA.

**Withdrawn.**

## Off Docket Item

**Motion by Newman to include Off Docket Item; seconded by Casillas. Carried.**

6(a). Commissioner Newman: Richard Pinckard, Esq., on behalf of 2004-06, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges from the Sheriff's Department.

**Withdrawn.** (See Regular Agenda Item No. 4 above)

## DISCIPLINES

### Findings

7. Commissioner Newman: Richard Pinckard, Esq., on behalf of **2004-03\***, former Sheriff's Sergeant-Detentions, appealing an Order of Termination and Charges from the Sheriff's Department.

### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency (completion of two reports documenting an investigation, both of which

contained significant errors); Cause II - Dishonesty; Cause III - Dishonesty; and Cause IV - Guilty of acts which are incompatible with and/or inimical to the public service.

Employee is a Corrections Deputy Sergeant. He was terminated on charges of untruthfulness and failure to follow departmental procedures while he was investigating another deputy's alleged misconduct. The alleged untruthfulness pertained to certain admitted inaccuracies in his investigation report. However, at the Commission hearing, it was established that all material aspects of the report were accurate. The inaccuracies were largely immaterial to the appropriate investigation findings. Moreover, there was no evidence of an intention by Employee to be untruthful. Rather, the inaccuracies appeared to be partly a result of Employee's medical condition at the time, other personal factors, and a lack of training regarding internal affairs investigation documentation. The Department failed to prove intentional untruthfulness by Employee. Additionally, Employee's decision not to record all interviews appeared consistent with the Department's practice. However, there was substantial evidence of incompetence and neglect beyond the justification of his personal circumstances at the time. Accordingly, it is recommended that Employee be reinstated but be suspended for ninety days and demoted to his pre-promotion classification of Corrections Deputy.

It is therefore recommended that Employee be reinstated and demoted to the classification of Deputy Sheriff-Detentions/Court Services (Class No. 5757); that Employee be suspended for ninety (90) calendar days; that Employee will be awarded back pay, benefits, and interest from the date of termination until the date of the Commission decision at the compensation level of a Deputy Sheriff-Detentions/Court Services (Class No. 5757), minus any wages he received from outside employment and minus the ninety-day suspension referred to above; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations;  
seconded by Casillas. Carried.**

<b>AYES:</b>	<b>NEWMAN, CASILLAS, KRAUEL</b>
<b>NOES:</b>	<b>SANDSTROM</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>AUSTIN</b>

## **DISCRIMINATION**

### **Complaints**

8. **Regina Mitchell**, Residential Care Worker I, HHSA, alleging race discrimination by the HHSA. (Continued from the Commission's April 21, 2004 meeting.)

**RECOMMENDATION:** Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct

an investigation and report back. (See No. 9 below.)

**Motion by Newman to accept staff recommendation; seconded by Casillas. Commissioner Krauel appointed.**

## **SELECTION PROCESS**

### **Complaints**

9. **Regina Mitchell**, Residential Care Worker I, HHSA, appealing her non-selection for the classification of Residential Care Worker II by the HHSA. (Continued from the Commission's April 21, 2004 meeting.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation. (See No. 8 above.)

**Staff recommendation approved.**

### **Findings**

10. **Jerry L. Davis**, appealing the removal of his name from the employment list for Deputy Sheriff-Detentions/Courts by the Department of Human Resources (DHR).

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Ratified.**

## **SEPARATIONS**

### **Findings**

11. Commissioner Newman: Monica Guizar, Esq., on behalf of **Laura Dizon**, former Eligibility Technician, appealing a Final Notice of Automatic Separation for Failure to Return After Leave from the HHSA.

### **FINDINGS AND RECOMMENDATIONS:**

The Final Notice of Automatic Separation was dated January 24, 2003, mailed via registered mail on January 24, 2003, and picked up from the post office by Appellant on February 3, 2004. A letter from Appellant's representative appealing the Separation and requesting reinstatement, was dated and received by the Civil Service Commission on February 12, 2003.

Appellant was deemed by the Agency to have resigned under Civil Service Rule 14.2.3, "Resignation Upon Failure to Return After Leave." She allegedly failed to timely return to work from authorized leave. The evidence produced at the hearing established that shortly before she was scheduled to return to work, she telephonically notified the Agency she was taking additional leave as a result of the sudden hospitalization of her daughter. Her daughter's hospitalization constituted a "qualifying reason" for Family Medical Leave under the federal Family Medical Leave Act and the California Family Rights Act. However, her notice was inadequate. She failed to notify the

Agency of the anticipated duration of her leave. She failed to provide the Agency with information by which they could further contact her. She failed to further communicate with the Agency regarding the status of her daughter's condition or of her anticipated return. In summary, she failed to provide the Agency with the basic information with which it could reasonably plan for her absence.

The Agency proved the facts necessary to support its separation of Employee under Civil Service Commission Rule 14.2.3. It is therefore recommended that the Agency decision be affirmed, that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission

**Motion by Newman to approve Findings and Recommendations; seconded by Casillas. Carried.**

## **INVESTIGATIONS**

### **Complaints**

12. Ron Frease, SEIU Local 2028, requesting an investigation be conducted under the provisions of Civil Service Rule XI into alleged violations of Civil Service Rule XIV (regarding layoffs) by the DHR.

RECOMMENDATION: Deny Request.

Ron Frease, SEIU Local 2028, requested a withdrawal of this matter due to ongoing negotiations with DHR, rendering this request for investigation moot at this time.

**Withdrawn.**

## **RECONSIDERATION**

13. Douglas Olins, Esq., on behalf of **Public Defender Attorneys**, requesting reconsideration of the Commission's April 21, 2004 decision to approve the suborganizational layoff requests of Public Defender Steven J. Carroll and Alternate Public Defender Timothy A. Chandler.

RECOMMENDATION: Consider Request for Reconsideration.

Douglas Olins, Esq., on behalf of the Public Defender Attorneys, requested reconsideration of the Commission's April 21<sup>st</sup> action. Robert's Rules of Order state that a motion to reconsider can only be made by a member who voted with the prevailing side. The making of a motion to reconsider is subject to time limits - it can only be made on the same day the vote to be reconsidered was taken. The Commission may suspend Robert's Rules of Order upon unanimous approval of those present at the meeting. (Rule 1.1.13.)

**Motion by Newman to suspend Rules; seconded by Krauel. Carried unanimously.**

**Motion by Newman to reconsider the Commission's approval of**

the suborganizational layoff; seconded by Casillas. Carried.

AYES: Casillas, Newman, Krauel  
NOES: Sandstrom  
ABSTENTIONS: None  
ABSENT: Austin

The Commission then heard from Mr. Olins, Dennis Floyd, Sr. Deputy County Counsel, Carlos Arauz, Director, DHR, Bart Sheela, Esq., Steve Carroll, Public Defender, Timothy Chandler, Alternate Public Defender, and Miriam Modrak, Association President. After thoroughly revisiting this matter, the Commission believed that the Department Heads (Messrs. Carroll and Chandler) were the best gauge regarding the suborganizational layoffs in each of their respective Departments.

**Motion by Casillas to deny request for reconsideration; seconded by Sandstrom. Carried.**

#### **OTHER MATTERS**

##### **14. Civil Service Commission 2004-06 Operational Plan**

Commissioner Sandstrom appointed a subcommittee to review the Operational Plan and report back to the Commission at its next regular meeting, including the impact on William A. Adams, the Commission's Legal Advisor.

**Commissioners Newman and Casillas appointed. Accepted.**

As a separate item, Commissioner Sandstrom appointed Commissioners Newman and Krauel to look into whether an "abstention" vote acts as an "aye" vote. Ralph Shadwell, Sr. Deputy County Counsel raised this issue at the last Commission meeting and the Commission as a whole wants clarification re this procedure.

**Commissioners Newman and Krauel appointed. Accepted.**

##### **15. Executive Officer Classification: Salary and Recruitment.**

Commissioner Sandstrom advised that a letter has been drafted and submitted to Carlos Arauz, Director, DHR, specifying the recruitment qualifications for the hiring of a new Executive Officer. He further advised that the Commission is required to submit a salary range of \$90,000 to \$120,000 to the CAO for approval. Both of these issues will be revisited at the next regular Civil Service Commission meeting. Commissioner Sandstrom thanked Mr. Arauz for his continued assistance in this matter.

##### **16. Public Input.**

Ron Frease, representing SEIU Local 2028, requested that the Commission consider keeping its part-time Executive Officer due to the current financial climate of the County. He noted,

and Commissioner Sandstrom concurred, that the Department is running smoothly and there has been no fault found with the performance of the current Executive Officer. Commissioner Sandstrom explained that the Civil Service Commission will continue to recruit for a full-time Executive Officer.

ADJOURNMENT: 4:15 p.m.

**NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: MAY 19, 2004.**

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\* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).